

Exhibit A

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

NORTHWEST STAFFING RESOURCES, INC., an Oregon corporation; RESOURCE STAFFING GROUP, INC., an Oregon corporation; DULCICH STAFFING, LLC, an Oregon limited liability corporation; and DOES 1 through 25, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

U-HAUL COMPANY OF CALIFORNIA, INC., a California corporation

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 27 2007

ALAN SLATER, Clerk of the Court

BY: F. IBARRA DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito debe estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

ORANGE COUNTY SUPERIOR COURT OF CALIFORNIA
700 Civic Center Drive West
Santa Ana, California 92702
CENTRAL JUSTICE CENTER

CASE NUMBER
(Número del Caso) **07CC07370**

JUDGE H. WARREN SIEGEL

DEPT. C13

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Robert Yonowitz (State Bar No. 132081) (949) 851-2424 (949) 851-0152
Stacey A. Zartler (State Bar No. 160859)
FISHER & PHILLIPS LLP

18400 Von Karman Avenue, Suite 400, Irvine, California 92612 FIDEL IBARRA

DATE: JUN 27 2007 ALAN SLATER Clerk, by Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

Northwest Staffing Resources, Inc.,
an Oregon corporation

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

COPY

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2 Stacey A. Zartler (State Bar No. 160859)
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10 Attorneys for Plaintiff
11 U-HAUL COMPANY OF CALIFORNIA, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF ORANGE

14 U-HAUL COMPANY OF CALIFORNIA,
15 Inc., a California corporation,

16 Plaintiff,

17 v.

18 NORTHWEST STAFFING RESOURCES,
19 INC., an Oregon corporation; RESOURCE
20 STAFFING GROUP, INC, an Oregon
21 corporation; DULCICH STAFFING, LLC,
22 an Oregon limited liability corporation;
23 and DOES 1 through 25, inclusive,

24 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 27 2007

ALAN BLATER, Clerk of the Court

BY: E. BARBA, DEPUTY

Civil Action No.:

COMPLAINT FOR DAMAGES,
RESTITUTION, INJUNCTIVE and
DECLARATORY RELIEF

- 07CC07370
- (1) FRAUDULENT INDUCEMENT (Promise Without Intent to Perform);
 - (2) FRAUD (Intentional Misrepresentation)
 - (3) FRAUD (Intentional Concealment);
 - (4) UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES (Cal. B & P Code § 17200);
 - (5) FALSE AND MISLEADING ADVERTISING (Cal. B & P Code § 17500);
 - (6) AIDING AND ABETTING /INDUCING/CONSPIRACY TO VIOLATE Cal. B & P Code §§ 17200 and 17500
 - (7) BREACH OF CONTRACT
 - (8) CONTRACTUAL INDEMNITY;
 - (9) EQUITABLE INDEMNITY AND CONTRIBUTION

DEMAND FOR JURY TRIAL
JUDGE H. WARREN SIEGEL
DEPT. C13

COMPLAINT JUDGE H. WARREN SIEGEL
DEPT. C13

Irving 472520.1

1 Plaintiff U-HAUL COMPANY OF CALIFORNIA (UHC), on behalf of itself and the
2 general public, and demanding a jury trial, hereby complains and alleges upon information and
3 belief as follows:

4 JURISDICTION AND VENUE

5 1. This is a civil action grounded in breach of contract, indemnity, fraud, and unfair
6 business practices in violation of California Business and Professions Code sections 17200, et
7 seq., commonly known as the Unfair Competition Law. This Court has jurisdiction over all
8 causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10
9 which grants the Superior Court original jurisdiction in all cases except those given to other
10 trial courts. The Court also has jurisdiction over certain causes of action pursuant to California
11 Business and Professions Code sections 17203 and 17204, which provide for exclusive
12 jurisdiction for enforcement of the Business and Professions Code statutes in any court of
13 competent jurisdiction. Additionally, jurisdiction may be exercised by virtue of the California
14 long-arm statute, California Code of Civil Procedure section 410.10.

15 2. Venue as to each Defendant is proper in this county pursuant to California Code
16 of Civil Procedure sections 395(a), and 395.5 and *Easton v. Superior Court* (1970) 12 Cal.
17 App. 3d 243, 246-247, 90 Cal. Rptr. 642, 644 because the defendants are all foreign
18 corporations, incorporated and/or organized in the State of Oregon, doing business in
19 California, and according to the Secretary of State records, none of the defendants have
20 identified a principal place of business in California, thus allowing this action to be filed in any
21 county in this State.

22 THE PARTIES

23 3. At all times relevant to the Complaint, U-Haul Company of California operated
24 a repair shop located at 44511 Grimmer Boulevard in Fremont, California.

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4. Defendant Northwest Staffing Resources, Inc. is an Oregon Corporation which also operates as a business enterprise in California. Resource Staffing Group, Inc. is an Oregon Corporation which operates as a business enterprise in California. Defendants represent to the public on their internet websites that both of the above entities are a part of "The RSG Family of Companies." Northwest Staffing also represents on its website that Resource Staffing is its "California affiliate." The Company's vendor disclosure statement identifies both Northwest Staffing and Resource Staffing to be part of the "Dulcich Staffing, LLC" business structure. Dulcich Staffing, LLC is an Oregon limited liability company which is the owner, operator, alter ego, or controlling party of Resource Staffing Group and Northwest Staffing and operates a business enterprise in California. Defendants Northwest Staffing Resources, Inc., Resource Staffing Group, Inc., and Dulcich Staffing, LLC will be collectively referred to as "Defendants."

5. The internet websites of Northwest Staffing Resources (www.nwstaffing.com) and Resources Staffing Group (www.resourcestaff.com) are identical in all material respects as they relate to the fraud, unfair competition and misleading advertising claims in this lawsuit.

6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 25, inclusive, and therefore sues these Defendants by fictitious names. If the true names and capacities of the DOE Defendants are ascertained, Plaintiff will amend the

Complaint to identify them by name. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the conduct herein alleged, and that Plaintiff's damages and other losses were caused thereby.

7. Certain of the individual Defendants, including any individual DOES 1 through 25, and each of them, partially or wholly own and/or control one or more of the other Defendants; that said individual Defendants are the sole or majority stockholders, officers, and/or directors of the Defendant companies; that said Defendant companies are controlled and managed by said individual Defendants, that the moneys among said Defendants are commingled and intermingled; that there is a unity of ownership and interest among them; that the credit and goodwill of one is used for the credit and goodwill of the others; and/or that one

1 or more companies was incorporated and/or capitalized with funds insufficient to meet
2 reasonable requirements and operations; and that, as a result of the foregoing, one or more of
3 the Defendant companies was the instrumentally, conduit, adjunct, and/or alter ego of one or
4 more of the other Defendants.

5 8. At all relevant times, Defendants, and each of them, was the owner, agent,
6 representative and/or employee of each of the remaining Defendants and, in doing the things
7 alleged herein, was acting within the scope of such agency, ownership and/or employment.

8 9. At all relevant times, Defendants, and each of them, was also acting in their own
9 individual capacities and for their own purposes in conspiring, aiding/abetting, authorizing,
10 ratifying, consenting to, condoning, approving and performing the acts alleged herein.

11 10. At all relevant times, Defendants, and each of them, ratified, consented to,
12 condoned, approved and performed the acts alleged herein in concert with each of the other
13 Defendants and therefore the acts and omissions of each Defendant are imputable to each of the
14 other Defendants.

15 **GENERAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

16 **MISREPRESENTATIONS AND MISLEADING ADVERTISING**

17 11. Defendants have engaged and continue to engage in a pattern and practice of
18 falsely, unfairly, unlawfully, and fraudulently advertising, promising, misrepresenting and
19 contracting that it is, and intends to be, the employer of the employees assigned to their clients,
20 for the purpose of inducing said clients into entering into business relationships with them
21 while, in fact, never actually intending to assume the responsibilities as the employer of these
22 employees.

23 12. In their marketing, advertising and bidding materials (*See e.g.*, Exhibit A), in the
24 employment materials given to its employees (*See e.g.* Exhibit B), in their contracts with clients
25 (*See e.g.* Exhibit C), and on Defendants' public internet websites (www.nwstaffing.com; and
26 www.resourcestaff.com), Defendants have engaged in a policy and practice of falsely,
27 affirmatively and unequivocally representing, guaranteeing and/or insisting that one and/or all
28 of the Defendants are the employer and/or sole employer of the employees they assign to

1 clients including Plaintiff. Such representations and guarantees include that Defendants will
2 assume responsibility for soliciting, accepting and processing employment applications, prior
3 employment verification and reference checks, verifying identity and eligibility to work in the
4 United States, drug testing, skills testing, interviewing, making written offers of employment,
5 hiring, providing personnel policies and procedures, providing a comprehensive 25-page
6 employee handbook, complaint procedures, grievance procedures and safety rules and training,
7 providing a written and oral orientation program, providing workers' compensation and
8 liability insurance, handling workers' compensation claims, deciding wages and wage
9 increases, tracking employee time on Defendants' timecards, processing paychecks, processing
10 tax paperwork and employment taxes, FICA, FUTA, SDI, social security, unemployment
11 insurance, federal and state tax deductions, providing medical dental and vision benefits,
12 comply with all employment and labor laws, including anti-harassment and discrimination
13 laws, disability accommodation laws, family and medical and jury duty leave.

14 13. Defendants' assigned employees are required to agree that they will not accept
15 employment with the entity with whom they are assigned absent prior arrangement and
16 approval of Defendants. Defendants' clients, such as Plaintiff, pay an agreed upon price for
17 utilizing these employees. Defendants' employees are employed with the promise that
18 Defendants is, and will be, their employer unless other arrangements are made.

19 14. On or about June 9, 2003, Defendants began presenting marketing bids to have
20 one of more of the Defendants provide temporary workers to some of Plaintiffs' California
21 worksites, including the Fremont, California site. (See Exhibit A). The materials promise that
22 Defendants will be the employer of the assigned employees. RSG Branch Manager Defendant
23 Rod Crowell followed-up on the June 2003 bid as it related to the Fremont, California UHC
24 site. Crowell continued to make the representations described above to Bob Aleo in Human
25 Resources at U-Haul International, Inc., as well as to Ricardo Briceno, UHC Shop Manager in
26 Fremont, including that Defendants would be the sole employer of the assignees with all of the
27 duties and responsibilities, and rights, such as hiring, firing, insurance, benefits, etc., as are
28 fully set forth above. Like all of Defendants' press, the marketing and bidding materials given

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COMPLAINT

Irvin 472520.1

1 to UHC affirmatively and unequivocally falsely and/or deceptively represented that the workers
2 would be employees of Defendants, and Defendants would incur the personnel, payroll,
3 insurance and other responsibilities and duties set forth above in Paragraph 12.

4 15. These representations were false when made as Defendants never intended for
5 Defendants to be the employer of these employees as evidenced by a June 29, 2004 letter from
6 RSG and statements made by Crowell to UHC and others in late June and early July 2004, *that*
7 *RSG is not the employer of these employees but rather provided only "a payroll service" and*
8 *makes no decisions regarding the employment of its own employees!* Moreover, these
9 employees were never employed by UHC; indeed, by virtue of their agreements with RSG,
10 they were prohibited from applying for employment with UHC. (Exhibits B and C).

11 THE STAFFING SERVICES AGREEMENT

12 16. In reliance on these false promises, Plaintiff decided to enter into a business
13 relationship with RSG for the provision of temporary workers at its Fremont, California site.
14 The relationship was formalized in a contract between Plaintiff and Defendants which was
15 negotiated and executed on May 12, 2004, by Briceno and Crowell. Pursuant to the written
16 contract, Defendants were to employ and assign certain of its employees to Plaintiff at the UHC
17 Fremont location for a 32% mark-up on their pay. (Exhibit C) ("It is mutually agreed that UHC
18 retains Staffing Agency to assign certain of its employees to fill UHC's need for temporary
19 personnel...") (Exh. C § I(a)).

20 17. Consistent with their marketing materials, Defendants made the following false
21 and misleading representations in the May 12, 2004 Staffing Services Contract (hereinafter
22 "Services Contract"):

23 "It is understood and agreed that all individuals assigned to U-
24 Haul are employees of Staffing Agency [RSG] and not U-Haul."

25 (Exh. C, § I(b)).

26 "As the employer, Staffing Agency shall, among other things,
27 maintain all necessary personnel, payroll and other records for its
28 employees assigned to U-Haul; compute its employees' wages and
withhold applicable federal, state and local taxes, federal social
security payments and all other required withholdings;

(i) remit employee withholdings to the proper governmental authorities, and make employer contributions for federal FICA, Workers' Compensation insurance, and federal and state unemployment insurance premiums;

(ii) pay net wages and fringe benefits, if any, directly to its employees;

(iii) verify employment eligibility in conformity with federal immigration laws and maintain all necessary records for its employees assigned to U-Haul, including Form I-9's and;...."

Exh. C § I(c). The list goes on. Defendants retained sole right and responsibility over its employees as follows:

"Staffing Agency shall have the sole right and responsibility to recruit, interview, test, evaluate, hire, supervise, determine compensation, promote, discipline, and discharge its employees assigned to U-Haul. Staffing Agency employees shall not be entitled to holidays, vacations, disability insurance, pensions or retirement plans or any other benefits offered or provided by U-Haul to its direct employees."

Exh. C, § I(d). Defendants' employees were required to sign an Acknowledgement that their benefits were separate from UHC employee benefits and waiving any right to same. They were also given handbook materials regarding Defendants' employee benefits. (Exhibit B)

18. In the Services Contract, Defendants represented that it was responsible for all employee selection and background checks for its employees assigned to UHC, including

interviewing, testing, screening, verification of references, education, prior employment, drug testing and credit searches, as well as FMLA and ADA compliance. (Exh. C, § II)

19. UHC was prohibited from terminating Defendants' employees. Defendants also specifically retained the right to reassign any employee to another client should UHC be dissatisfied with a worker's performance. (Exh. C, § II)

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20. Defendants further represented that it was wholly responsible for the employees assigned to UHC as follows:

"III. WORKER'S EMPLOYMENT STATUS AND RECORDS

Staffing Agency and not U-Haul is the employer of the worker and retains the sole right to recruit, interview, test, hire assign, evaluate, discipline and discharge the worker, and to establish and modify wages and benefits, including vacations and other paid and unpaid leave, and to prepare and maintain all payroll records and pay and withhold all wages and related employment taxes and deductions."

(Exh. C, § III).

21. Defendants represented that they would have responsibility for maintaining injury/illness records, including workers' compensation, payroll and benefit records for 7 years, and would handle all employee grievances. (Exh. C, § III). Defendants also represented that it would maintain "at its sole cost and expense" insurance coverage for its employees, including general liability, umbrella, workers' compensation and employer's liability. (Exh. C, § IV).

22. Defendants also represented and agreed that they had the sole power to resolve employee grievances regarding treatment while working at the UHC site. (Exh. C, § IV). By definition, this provision makes it Defendants' responsibility to address the grievances raised by its employees seeking union representation in June 2004 and their claims that they were wrongfully terminated for union organizing thereafter.

23. Defendants agreed that they would "observe and comply with all local, state and federal laws, rules, regulations and ordinances now or hereafter in force that in any way pertain to these contracted services....." including all laws pertaining to wages and hours of work, posting notices, taxes, and discrimination or retaliation based on "any category protected by law." (Exh. C, § V).

REPUDIATION OF REPRESENTATIONS AND AGREEMENTS

24. On June 14, 2004, UHC was made aware of a union organizing drive at its Fremont location. UHC received a letter from the International Association of Machinists and Aerospace Workers Union (IAM) which claimed representation of majority of maintenance

1 repair employees at the Fremont location. An R petition was filed naming UHC and
2 Defendants as joint employers.

3 25. On June 29, 2004, in spite of past, continuing and future representations to the
4 public, its clients and its employees, as well as past, continuing and future staffing contracts
5 (wherein Defendants' unequivocally state that Defendants were and are the employer of the
6 employees they assign to their clients, including UHC), Defendants fraudulently, unfairly and
7 unlawfully asserted in written correspondence to UHC that Defendants were essentially only a
8 "payroll service" and were not the employer of the employees assigned to work at UHC.
9 (Exhibit D).

10 26. Plaintiff is informed and believes that Defendants made similar unlawful,
11 fraudulent and unfair oral and written statements, including a statement made to UHC's former
12 outside counsel and an affidavit under oath to NLRB investigators, to the effect that RSG was
13 NOT the employer of the employees assigned to the UHC Fremont location. Plaintiff is also
14 informed and believes that one or more of Defendants' employees including, but not limited to
15 Branch Manager Rod Crowell, offered to testify under oath at the NLRB proceeding that
16 Defendants provided only a payroll service and was NOT the employer of the assigned
17 employees.

18 27. The Services Contract between Defendants and UHC, which unequivocally
19 stated in as clear as terms as is possible that all individuals assigned to UHC were employees of
20 Defendants and not UHC, was in effect when the contrary statements above were made. Also,
21 Defendants' internet websites represented then and have continued to represent to the public, to
22 prospective clients and employees, and to current clients and employees, that they ARE the
23 employer of the employees they provide. In fact, Defendants provided temporary employees to
24 UHC based on the same false representations and contractual promises at the UHC location in
25 Sacramento, California. On information and belief, Defendants continue to enter into contracts
26 with clients and relationships with individuals where they continue to represent to all involved
27 that they ARE the employer.

28 ///

1 28. Prior to this time, no one affiliated with Defendants ever indicated that there was
2 any circumstance where they would not consider themselves the employer of the assigned
3 employees. To the contrary, the only promises and representations Defendants made were that
4 Defendants unequivocally were the *sole employer* of the employees assigned to UHC in
5 Fremont. Plaintiff would have never entered into the arrangement with Defendants if it had
6 known the truth.

7 29. During the midst of the NLRB election proceedings, on or about July 2, 2004,
8 Defendants gave 30 days' notice of its desire to terminate the Services Contract with UHC in
9 Fremont effective on August 2, 2004. Because Defendants insisted on the sole right and
10 responsibility for determining and administering the terms and conditions of these employees'
11 employment, including hiring, termination and/or reassignment, UHC had no choice but to tell
12 these Defendants' employees to depart with Defendants for reassignment.

13 30. These workers were never UHC employees, were not on the UHC payroll,
14 benefit or insurance plans; they were, at Defendants' insistence, Defendants' employees.
15 Indeed, the Defendants' employee handbook given to these employees specifically prohibited
16 Defendants' employees from soliciting employment with UHC. (Exhibit B). However, to
17 Plaintiff's knowledge, Defendants did not communicate to their employees that they were
18 terminating the UHC Services Contract, nor did Defendants attempt to reassign employees

19 working at UHC to other Defendants' clients. Nor did Defendants terminate and/or reassign
20 their employees' employment, as they were required to do in ¶5 of the Employment
21 Agreement they executed with these employees, due to Defendants' cancellation of its contract
22 with UHC. (Exhibit B) Contrary to its representations, Defendants simply abandoned their
23 employees on UHC's Fremont site. This is despite the fact that, pursuant to Defendants'
24 contract with UHC, Defendants retained the sole right to terminate and/or reassign those
25 employees. This left UHC with no alternative but to tell Defendants' employees to leave the
26 UHC worksite as they were not UHC but Defendants' employees.

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1 31. In that same time period, the NLRB directed an election of a bargaining unit at
2 UHC which did not include Defendants as an employer or joint employer of their own self-
3 declared employees; but rather included them in the UHC employee bargaining unit as
4 "employees supplied by temporary employment agencies....."

5 32. Plaintiff is informed and believes and alleges that Defendants' conduct and
6 comments, including their unabashed eschewing of their "employer" role (which had been, and
7 continues to be clearly touted publicly), was fraudulent, unfair and unlawful, and part of a
8 scheme and practice by all Defendants to mislead clients and employees into accepting staffing
9 service relationships/contracts by making false representations of employer status, while at the
10 same time never intending to accept that status where negative consequence to Defendants
11 could result.

12 33. Unfair labor practice charges were filed against UHC for the elimination of the
13 Defendants' employees' positions, which would not have occurred had Defendants' not
14 engaged in the unfair, deceptive and unlawful conduct, including repudiating their self-
15 promoting and misleading "employer" representations and abandoning their employees on the
16 UHC site and instead honored Defendants' obligation to terminate its own employees when
17 Defendant cancelled the contract. As a result, UHC has incurred substantial costs, attorneys'
18 fees and other expenses, has been held liable and has been forced to pay back wages to

19 Defendants' employees in amounts to be fully determined. The unfair labor practice charges
20 resulted in a settlement wherein UHC has been forced to incur back pay liability to Defendants'
21 employees (who were never even on UHC's payroll), in amounts exceeding \$279,000, as well
22 as substantial attorneys' fees, costs and administrative expenses relating to these unfair labor
23 practice charges and payment processing.

24 34. Moreover, as set forth fully below, Defendants falsely promised and guaranteed
25 in its marketing to Plaintiff and agreed in the Services Contract, that it would release,
26 indemnify, defend and hold UHC harmless from all damages, claims and liabilities resulting
27 from its acts, errors and omissions, which undoubtedly include representing itself and
28 contracting to be the sole employer of these employees, while eschewing its employment

obligations and abandoning its employees at UHC's site. (Exhibit C) By letter dated August 2, 2006, Plaintiff demanded that Defendants indemnify it in connection with the unfair labor charge proceedings. In spite of its representations and contracts, Defendants have stated, including by letter dated August 9, 2006, that it has no obligation to indemnify Plaintiff and has refused to indemnify Plaintiff for its conduct.

35. Plaintiff seeks restitution of all losses caused by Defendants' fraudulent, unfair, unlawful and deceptive scheme and injunctive relief prohibiting Defendants from representing to the public on its websites or otherwise, or entering into contracts providing that Defendants are the employer of the individuals assigned to their clients,

THE CONTRACTUAL INDEMNITY CLAUSES

AND DEFENDANTS' REFUSAL TO INDEMNIFY UHC

36. The Services Contract between Plaintiff and Defendants contained several broad clauses wherein Defendants agreed to hold UHC harmless from damages, claims and liabilities caused by its conduct. First, Defendants agreed that it:

"[A]ccepts exclusive liability for noncompliance with the foregoing laws and shall release, indemnify, defend, and hold harmless U-Haul and any affiliated or related corporations, employees, or agents from any and all claims, liabilities, damages, demands, judgments, costs or expenses (including attorneys' fees and expert witness fees) of any kind or nature which Staffing Agency, an employee of Staffing Agency, or any other third party may have which arise directly or indirectly under any theory of law pertaining to these contracted services. The foregoing duties of indemnity shall apply notwithstanding any negligence of U-Haul or its affiliated or related corporations, employees or agents which may have occurred with respect to any such matter."

Exhibit C, § V.

37. Second, in a separate Section VI, entitled "INDEMNIFICATION", Defendants agreed in the Service Contract as follows:

Staffing Agency agrees to indemnify, defend, and hold U-Haul and any affiliated or related corporations, its agents and employees, harmless from and against any and all liability, expenses (including court costs, attorneys' fees, and expert witness fees), and claims for damage of any nature whatsoever, whether known or unknown, which U-Haul may incur, suffer, become liable for, or which may be asserted or claimed against U-Haul as a result of the acts, errors, or

1 omissions of Staffing Agency or Staffing Agency's employees,
 2 including but not limited to, . . . all claims arising under... the
 3 National Labor Relations Act . . . and all other applicable state, local
 4 or federal statutes, . . . all common law causes of action, including
 5 claims for breach of contract, . . . wrongful discharge, . . . tort, or any
 6 other personal injury or damages, and all claims for wages bonuses,
 7 allowances, benefits, or other compensation in money or in kind
 8 and/or any claims asserted by Staffing Agency's employees arising
 9 out of their employment or termination of employment with Staffing
 10 Agency or their assignment or termination of assignment with U-
 11 Haul... Staffing Agency and U-Haul intend that Staffing Agency's
 12 obligation to indemnify U-Haul be construed broadly so as to
 13 provide the greatest possible protection to U-Haul and ensure that the
 14 parties' staffing arrangement contemplated by this Agreement has no
 15 adverse financial or administrative impact on U-Haul. Staffing
 16 Agency agrees that U-Haul may compromise or settle any such claim
 17 without affecting Staffing Agency's indemnification obligations
 18 hereunder.

19 Exhibit C, § IV (emphasis added.)

20 38. On August 4, 2006, Plaintiff sent a written demand to Defendants to indemnify
 21 Plaintiff under Sections V and VI of the Services Contract for its expenses, fees, costs, liability
 22 and other losses as a result of the acts, errors and omissions of Defendants and their agents and
 23 employees set forth herein. Defendants' conduct falls squarely within the indemnification
 24 clauses.

25 39. The unfair labor practice charges resulted in a settlement wherein UHC has been
 26 forced to incur back pay liability to Defendants' employees (who were never even on UHC's
 27 payroll), in amounts exceeding \$279,000, as well as substantial attorneys' fees, costs and

28 administrative expenses relating to these unfair labor practice charges and payment processing.
 In spite of its representations and contracts, Defendants have stated, including by letter dated
 August 9, 2006, that it did not believe it had any obligation to indemnify Plaintiff and has not
 indemnified Plaintiff for its conduct.

ATTORNEYS' FEES

40. The Services Contract provides for an award of attorneys' fees and costs to the
 prevailing party in an action brought as a result of a breach or default under any provision of
 the Contract, (Exhibit C, § XVII).

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FIRST CAUSE OF ACTION

(Fraudulent Inducement- Promise Without Intent to Perform)

(Against All Defendants)

41. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation in Paragraphs 1 through 40, inclusive.

42. Defendants have made and continue to make false and misleading representations and promises about material matters, without any intention of performing them, as set forth fully above, including, without limitation, that Defendants were/are the sole employer of the employees assigned to UHC, that it will assume all rights and responsibilities as sole employer, that it will not violate any state or federal laws including the National Labor Relations Act, and that it will indemnify and hold UHC harmless for its acts, errors and omissions, including, but not limited to, its repudiation of employer status, its failure to carry out its obligations as the sole employer, including, but not limited to, not terminating its own employees and/or reassigning its employees upon cancellation of its contract with UHC and not defending, indemnifying, or holding UHC harmless for claims made against UHC arising out of Defendants' role in carrying out their duties, including their duty to terminate their employees and to indemnify and defend UHC before the NLRB.

43. These representations were in fact false when made. The truth was that Defendants represented and agreed to be the employer for the purpose of collecting fees from UHC, all the while, never intending to serve as the true employer of its assigned staffing employees, including without limitation, if it meant these individuals might be represented by a union.

44. Defendants' promises were made and continue to be made with the intent to defraud, mislead and induce Plaintiff (and other clients) to rely upon them by entering into staffing contracts and employment relationships with Defendants to their detriment and Defendants' pecuniary gain, and were hastily repudiated by Defendants in the face of the union organizing campaign, with no attempt to re-assign their employees or to accept responsibility for their representations, promises and commitments. On information and belief, Plaintiff

1 asserts that Defendants had pre-planned union avoidance strategies that involved repudiation of
2 said employer status before the representations of employer status were made.

3 45. In justifiable reliance on Defendants conduct, Plaintiff was induced to act,
4 including without limitation, as follows: to enter into the Services Contract with Defendants
5 based on the expectation of UHC that the employees were Defendants' only to find out that
6 UHC had to represent itself in the union organization of employees who Defendants falsely
7 represented and agreed were solely Defendants' own employees, to defend against charges
8 relating to the elimination of the positions of Defendants' employees after Defendants'
9 repudiation of its employer status and abandonment of its employees at UHC's site, to incur
10 substantial costs, attorneys' fees, and liability arising out of Defendants' acts and practices.

11 46. Plaintiff has been damaged as a result of its reliance on Defendants' fraud,
12 including without limitation as follows: it has incurred substantial attorneys' fees and costs in
13 representing and defending itself in NLRB proceedings relating to Defendants' employees, has
14 had its reputation damaged, incurred significant attorneys' fees to defend itself, incurred
15 administrative and other fees and costs, opportunity costs, expenses, costs, including consultant
16 costs, and over \$279,000 in back pay liability, among other damage.

17 47. As described herein, Defendants have acted with oppression, fraud, malice, a
18 conscious disregard for the rights of others, and/or have authorized or ratified the wrongful

19 conduct, which justifies, in addition to actual damages, an award of punitive damages under
20 Civil Code section 3294, to make an example of and punish Defendants

21 **SECOND CAUSE OF ACTION**

22 **(Fraud- Intentional Misrepresentation)**

23 **(Against All Defendants)**

24 48. Plaintiff incorporates by reference, as if fully set forth herein, each and every
25 allegation in Paragraphs 1 through 47, inclusive.

26 49. Defendants made misrepresentations of material fact as set forth fully above,
27 including without limitation that Defendants would serve as the employer of its staffing
28 employees assigned to its clients including UHC, and including the assumption of all related

1 rights and responsibilities and that it retained the sole power and authority to make employment
2 decisions affecting its assigned staffing employees, including, but not limited to, the sole right
3 and obligation to terminate and/or remove their employees from a client's site as well as the
4 obligation to deal with all employment-related issues, including, but not limited to, any and all
5 union issues affecting those employees.

6 50. These representations were in fact false when made. The truth was that
7 Defendants represented and agreed to be the employer for the purpose of collecting fees from
8 UHC, all the while, never intending to serve as the true employer of its assigned staffing
9 employees, including without limitation, if it meant these individuals might be represented by a
10 union.

11 51. Defendants knew the misrepresentations were false when they made them, as
12 evidenced by, among other things, their immediate repudiation of the representations within
13 days of union presence on the scene, their total abandonment of the terms of the contract, their
14 non-attempt to locate alternative assignments for their employees when they terminated the
15 Services Contract with UHC, and their abandonment of their employees.

16 52. Defendants made the representations with the intent to defraud and induce the
17 Plaintiff to rely on the truth of the promises to its detriment and to enter into a business
18 relationship with Defendants:

19 53. In justifiable reliance on Defendants' conduct, Plaintiff was induced to act,
20 including without limitation, as follows: to enter into the Services Contract with Defendants, to
21 represent itself in the union organization of employees who Defendants represented and agreed
22 were solely their own employees, to defend against charges relating the elimination of the
23 positions of Defendants' employees after Defendants' repudiation of its employer status and
24 abandonment of its employees at UHC's site, to incur substantial costs, attorneys' fees, and
25 liability arising out of Defendants' acts and practices.

26 54. Plaintiff has been damaged as a result of its reliance on Defendants' fraud,
27 including without limitation as follows: it has incurred substantial attorneys' fees and costs in
28 representing and defending itself in NLRB proceedings relating to Defendants' employees, has

1 had its reputation damaged, incurred significant attorneys' fees to defend itself, incurred
2 administrative and other fees and costs, opportunity costs, expenses, other costs, including
3 consultant costs, and over \$279,000 in back pay liability, among other damage.

4 55. As described herein, Defendants have acted with oppression, fraud, malice, a
5 conscious disregard for the rights of others, and/or have authorized or ratified the wrongful
6 conduct, which justifies, in addition to actual damages, an award of punitive damages under
7 Civil Code section 3294, to make an example of and punish Defendants.

8 **THIRD CAUSE OF ACTION**

9 **(Fraud- Intentional Concealment)**

10 **(Against All Defendants)**

11 56. Plaintiff incorporates by reference, as if fully set forth herein, each and every
12 allegation in Paragraphs 1 through 55, inclusive.

13 57. Defendants concealed and suppressed material facts including without limitation
14 that, despite representing that Defendants would serve as the employer of its staffing employees
15 assigned to its clients including UHC, and including the assumption of all related rights and
16 responsibilities and that they retained the sole power and authority to make employment
17 decisions affecting its assigned staffing employees, including, but not limited to, the sole right
18 and obligation to terminate and/or remove their employees from a client's site as well as the

19 obligation to deal with all employment-related issues, including, but not limited to, any and all
20 union issues affecting those employees, Defendants concealed the plan that Defendants would
21 not serve as the true employer of its staffing employees, including without limitation, if it
22 meant these individuals might be represented by a union.

23 58. Defendants had a duty to disclose these facts because they made other
24 representations of fact -- that Defendants were the employer, but did not disclose facts which
25 materially qualify the facts disclosed - that Defendants would not serve as the true employer of
26 their staffing employees, including without limitation, if it meant these individuals might be
27 represented by a union. These facts were known and accessible only to Defendants and
28 Defendants knew they were not known or reasonably discoverable by the Plaintiff.

1 59. Defendants also had a duty to disclose these facts because they told Plaintiff and
2 others facts to mislead them and prevent them from discovering the concealed or suppressed
3 fact, i.e. that employer status was unequivocal however, the truth was that Defendants never
4 intended to be the employer of these employees.

5 60. Defendants concealed and suppressed these facts with the intent to defraud and
6 induce the Plaintiff to act in detrimental reliance. In justifiable reliance on Defendants'
7 conduct, Plaintiff was induced to act, including without limitation, as follows: to enter into the
8 Services Contract with Defendants, to represent itself in the union organization of employees
9 who Defendants represented and agreed were solely its own employees, to defend against
10 charges relating the elimination of the positions of Defendants' employees after Defendants'
11 repudiation of its employer status and abandonment of its employees at UHC's site, to incur
12 substantial costs, attorneys' fees, and liability arising out of Defendants' acts and practices.

13 61. At the time Plaintiff acted, it was unaware of the concealed and suppressed facts
14 (e.g. that Defendants' employer status and responsibility was conditional) and Plaintiff would
15 not have taken the actions it did if Plaintiff had known the actual facts. Plaintiff would have
16 never entered into the service contract with Defendants and Plaintiff would never have had the
17 need to ask Defendants' employees to leave the UHC site when Defendants cancelled their
18 contract.

19 62. Plaintiff has been damaged as a result of its reliance on Defendants' fraud,
20 including without limitation as follows: it has incurred significant attorneys' fees and costs in
21 representing and defending itself in NLRB proceedings relating to Defendants' employees, has
22 had its reputation damaged, incurred administrative and other fees and costs, opportunity costs,
23 expenses, other costs, including consultant costs, and over \$279,000 in back pay liability,
24 among other damage.

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63. As described herein, Defendants have acted with oppression, fraud, malice, a conscious disregard for the rights of others, a conscious disregard for the statutory rights of Plaintiff and/or have authorized or ratified the wrongful conduct, which justifies, in addition to actual damages, an award of punitive damages under Civil Code section 3294, to make an example of and punish Defendants.

FOURTH CAUSE OF ACTION

(Unlawful, Unfair and Fraudulent Business Practices,

Cal. B & P Code § 17200, et. seq.)

(Against All Defendants)

64. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation in Paragraphs 1 through 63, inclusive.

65. Pursuant to sections 17203 and 17204 of the California Business and Professions Code, Plaintiff seeks to obtain restitution, disgorgement, injunctive relief, and other available remedies from Defendants for acts, omissions and business practices, as alleged herein, in violation of section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Act.

66. The conduct of Defendants alleged herein, and as described in Exhibits A through D, violated Section 17200. The acts and business practices, as alleged herein,

constituted and constitute, a common, continuous and continuing course of conduct of unfair competition by means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code sections 17200 et. seq.

67. Defendants' policy/practice of obtaining business contracts by falsely and fraudulent misrepresenting and holding Defendants out to the public as an employer and/or the exclusive employer of its assigned staffing workers, yet denying they are the employer to avoid potential employer duties, responsibilities and/or liability, is likely to mislead the general public and, consequently constitutes a fraudulent, unfair and/or unlawful business practice under Section 17200.

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68. The illegal conduct alleged herein is continuing and there is no indication that Defendants will cease and desist such activity in the future.

69. Plaintiff is entitled to full restitution of the losses incurred as a result of Defendants' conduct described herein, including significant attorneys' fees to defend itself, administrative and other fees and costs, opportunity costs, expenses, other costs, including consultant costs, and over \$279,000 in back pay liability, among other losses and all other expenditures resulting from Defendants' fraudulent and unfair practices.

70. Plaintiff is entitled to injunctive relief, including without limitation, an order that Defendants cease and desist all business acts and practices found to be in violation of Section 17200, et. seq., including but not limited to ceasing from making false representations to their customers and prospective customers that they are the employer of the employees they assign to their customers' work sites and providing notification to their customers and prospective customers like UHC of their previous false representations; or alternatively refraining from any further denials to their customers such as UHC that Defendants are, in fact, the employer of the employees they assign to their customers such as UHC.

FIFTH CAUSE OF ACTION

(False and Misleading Advertising,

Cal. B & P Code § 17500 et seq.)

(Against All Defendants)

71. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation in Paragraphs 1 through 70, inclusive.

72. Beginning at an exact date unknown to Plaintiff but at least since 2003, Defendants have engaged in a scheme to mislead customers, clients, employees and the general public by a series of misrepresentations. Defendants have committed acts of untrue and misleading advertising, as defined by Business and Professions Code section 17500 by engaging in the acts and practices described herein, including, but not limited to, Exhibits A through D attached hereto, in furtherance of a scheme done with the intent to mislead and induce members of the public to enter into contracts with them.

73. Such false and deceptive advertising includes Defendants' policy/practice of obtaining business contracts by falsely and fraudulently misrepresenting and holding Defendants out to the public as an employer and/or the exclusive employer of their assigned staffing workers, yet repudiating their self-proclaimed employer status to avoid potential employer duties, responsibilities and/or liability, is likely to mislead the general public and, consequently constitutes an fraudulent, unfair and/or unlawful business practice under Section 17200.

74. The acts of untrue and misleading advertising by Defendants described herein, present a continuing threat to members of the public in that said advertising is continuing unabated on Defendants' websites, and on, information and belief, members of the public are continuing to enter into contracts with Defendants based on said advertising. Plaintiff and the other members of the public have no adequate remedy at law.

75. Plaintiff is entitled to full restitution of the losses incurred as a result of Defendants' conduct described herein, including significant attorneys' fees to defend itself, administrative and other fees and costs, opportunity costs, expenses, other costs, including consultant costs, and over \$279,000 in back pay liability, among other losses and all other expenditures resulting from Defendants' fraudulent and unfair practices.

76. Plaintiff is entitled to injunctive relief, including without limitation, an order that Defendants cease and desist all business acts and practices found to be in violation of Section 17200, et. seq., including but not limited to ceasing from making false representations to their customers and prospective customers that they are the employer of the employees they assign to their customers' work sites and providing notification to their customers and prospective customers like UHC of their previous false representations; or alternatively refraining from any further denials to their customers such as UHC that Defendants are, in fact, the employer of the employees they assign to their customers such as UHC.

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SIXTH CAUSE OF ACTION

(Aiding and Abetting/Inducing/Conspiracy

to Violate Business and Professions Code sections 17200 and 17500)

(Against All Defendants)

77. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation in Paragraphs 1 through 76, inclusive.

78. On information and belief, Plaintiff alleges that individual Rod Crowell knew, was aware of, participated in, conspired, and/or directed the corporate Defendants' fraudulent, unfair, unlawful, false and deceptive activities alleged herein by virtue of all of the conduct alleged herein.

79. Plaintiff is entitled to full restitution of the losses incurred as a result of Defendants' conduct described herein, including significant attorneys' fees to defend itself, administrative and other fees and costs, opportunity costs, expenses, other costs, including consultant costs, and over \$279,000 in back pay liability, among other losses and all other expenditures resulting from Defendants' fraudulent and unfair practices.

80. Plaintiff is also entitled to injunctive relief, including without limitation, an order that Defendants cease and desist all business acts and practices found to be in violation of

Section 17500, et. seq., including false representations that it is the employer of the employees it assigns.

SEVENTH CAUSE OF ACTION

(Breach of Contract)

(Against All Defendants)

81. Plaintiff incorporates by reference, as if fully set forth herein, each and every allegation in Paragraphs 1 through 80, inclusive.

82. On May 12, 2004, Defendants and UHC entered into the Staffing Services Contract described fully above and attached hereto as Exhibit C. Among other provisions, the Contract provided that Defendants were the sole employer of the employees assigned to work at UHC's Fremont site and that they had the sole and exclusive right to determine all material

1 terms and conditions of employment, and the sole and exclusive right to terminate and/or
2 reassign the employment of said employees. The Contract likewise provided that UHC could
3 not hire or terminate Defendants' employees.

4 83. As described fully above, Defendants breached the Contract beginning in June
5 and July 2004, by repudiating Defendants' employer status and obligations, by not fulfilling
6 their indemnification obligations, and by not removing and/or reassigning Defendants'
7 employees from UHC's site and/or terminating the employment of their employees upon notice
8 that they were terminating the Contract.

9 84. As a direct and proximate result of Defendants' breach, Plaintiff has incurred
10 substantial losses, including significant attorneys' fees to defend itself, administrative and other
11 fees, opportunity costs and costs, expenses, other costs, including consultant costs, and over
12 \$279,000 in back pay liability, among other losses and all other expenditures resulting from
13 Defendants' conduct, and is entitled to attorneys fees and costs for pursuing the instant action
14 under Section XVII of the Contract.

15 EIGHTH CAUSE OF ACTION

16 (Contractual Indemnity)

17 (Against All Defendants)

18 85. Plaintiff incorporates by reference, as if fully set forth herein, each and every
19 allegation in Paragraphs 1 through 84, inclusive.

20 86. Defendants and Plaintiff entered into a contract in which Defendants agreed to
21 two very broad indemnity clauses for losses incurred as a result of any acts, errors or omissions
22 of Staffing Agency or its employees which are quoted fully above in Complaint Paragraphs 38
23 through 41, inclusive.

24 87. Defendants have breached their contractual obligation to indemnify Plaintiff,
25 which breach is the actual and proximate cause of resulting damages to Plaintiff.

26 88. Plaintiff has demanded that Defendants meet their indemnity obligations under
27 the Staffing Services Agreement, including by letter dated August 4, 2006. Defendants have
28 rejected said demand and have refused to indemnify Plaintiff for their acts, error and omissions,